IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 65 OF 2004

SHANU J.VELIP(SIN.DEC.) THROU'L.RS., ...Appellants

Versus

SHRI GANESH S.VELIP AND 7 ORS., ...Respondents

Ms. S. Linhares, advocate under Legal Aid Scheme for the appellants.
Mr. G. Kudchadkar, advocate for the respondent nos.1,2,4,5 & 6.

Coram:- R. M. LODHA, J.

Date:- 14th September, 2005

P.C.

Heard Ms. Linhares, the learned counsel for the appellants and Mr. Kudchadkar, the learned counsel for the respondent nos.1,2,4,5 and 6.

An application for setting the ex-parte Judgment and Award dated 3rd October, 2001 passed in Land Acquisition Case no.285/1992 was made by the appellants before the District Judge, South Goa at Margao. The case of the appellants was that notices were not personally served upon the appellants and that they were sent by registered post which was allegedly accepted by a minor and thus there was no valid service upon the present appellants.

It is not in dispute that the notices were sent to the appellants by registered post. The envelopes in which the notices were sent were accepted by Nayesh Govind Velip. The District Judge observed that there was nothing on record indicating that the said Nayesh Govind Velip was a minor. Even if Nayesh Govind Velip was treated as minor, that would not affect the validity of the service of notice. Admittedly, Nayesh Govind Velip is the son of Govind Shanu Velip (one of the appellants). The presumption of service clearly arises in the facts of the present case. The appellants miserably failed to rebut the said presumption before the Court below. Even otherwise, by virtue of the second proviso appended to

Order IX Rule 13 of the Code of Civil Procedure any irregularity in service does not furnish a ground for setting aside the ex parte decree.

On over all consideration of the matter, I am satisfied that the impugned Order does not suffer from any illegality.

No interference is called for. The Appeal From order is dismissed in limine.

R. M. LODHA, J.